IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/09/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.No.25075 of 2002
and W.P.No. 25076 of 2002
and
W.P.M.P.Nos.34430 and 34431 of 2002

M.Krishnaswamy .. Petitioner in both W.Ps.

-Vs-

1.The Registrar
Tamil Nadu Taxation
Special Tribunal,
Singaravelar Maaligai
Chennai.

2.The Appellate Assistant
Commissioner, Tirunelveli-2.

3.The Deputy Commercial Tax
Officer, Shencottah. .. Respondents in both W.Ps.

Prayer: Writ Petition under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in O.P.No.269 of 2001 and O.P. No.270 of 2001 dated 11.04.2001 respectively, quash the same and direct the second respondent to take the appeal on file and dispose of the same on merits.

For Petitioner : Mr.Naveen
for Mr.J.Ganesan
For Respondents 2&3 : Mr.T.Ayyasamy
Spl.Govt.Pleader (Taxes)

:O R D E R

(Order of the Court was made by K.RAVIRAJA PANDIAN, J.)

The above writ petitions are filed, challenging the
correctness of the order of the Tamil Nadu Taxation Special Tribunal
(hereinafter referred to as 'the tribunal') dated 11.4.2001 made in
O.P.Nos.269 and 270 of 2001 for the assessment years 1996-97 and 1994-95

respectively. Best judgment assessments were passed against the petitioner on 2.3.2000. As the order passed has been received by the petitioner belatedly, the petitioner filed an appeal under Section 31 of the Tamil Nadu General Sales Tax Act along with an application for condoning the delay in filing the appeal. The appellate authority rejected the appeal on the ground that the delay is more than 60 days, in the sense that, the appellate authority has no power to condone the delay if it is more than 60 days as per the statute. That order is put in issue before the Tribunal in the above petitions in O.P.Nos.269 and 270 of 2001. The tribunal non-suited the petitioner for filing an appeal even after the time limit prescribed under the statute. Now the correctness of the said order of the tribunal is challenged in the above writ petitions.

2. Learned counsel for the petitioner sought to argue the matter originally as against the order passed by the tribunal. However, he has also taken us through the assessment order and contended that the entire assessment is best judgment assessment dehorse production of any records of the petitioner. He contended that the petitioner was not able to attend the assessing officer because of his heart ailment. He further submitted that the penalty component is much more than the tax component. He pointed out that the penalty component is about 1 50% over and above the tax component.

3. We have heard the learned Special Government Pleader (Taxes). On a perusal of the assessment order, we are of the view that the assessment order has been made only on surmises and conjunctures and not based on the books of accounts and the penalty is also levied more than 150% of the tax component. Therefore, in the interest of justice, we are of the view that the petitioner has to be given one more opportunity to produce the accounts before the assessing officer so as to have a fair deal in the framing of assessment. Hence, the assessment order dated 2.3.2000 in both the cases are set aside and the petitioner is hereby directed to appear before the assessing officer along with all the records pertaining to the assessment years on 18th October, 2004. The assessing officer is directed to proceed further and finalise the assessment in accordance with the provisions of the Act. If the petitioner is not co-operating with the assessing officer as directed above, it is open to the assessing officer to proceed further in the manner known to law. With these observations, the writ petitions are disposed of. No costs.

KST

To

1.The Registrar,Tamil Nadu Taxation Special Tribunal,
Singaravelar Maaligai,Chennai.

2.The Appellate Assistant Commissioner, Tirunelveli-2.

3.The Deputy Commercial Tax Officer, Shencottah.